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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/051,529	01/22/2002	Guido Baumoller	4002-1002-1	8987

466 7590 01/21/2004

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EXAMINER

HOWARD, SHARON LEE

ART UNIT PAPER NUMBER

1615

DATE MAILED: 01/21/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/051,529

Applicant(s)

BAUMOLLER ET AL.

Examiner

Sharon L. Howard

Art Unit

1615

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 23 July 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 14, ~~15, 16, 17, 18, 19, 20, 21, 22, 23, 24~~ 26 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 16, 17, 23, 24 is/are allowed. \* *see page 5 of office action*
- 6) ☒ Claim(s) 14, 15, 18-22, 25 and 26 is/are rejected.
- 7) ☐ Claim(s) 23, 24 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. §§ 119 and 120**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.  
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

The examiner acknowledges receipt of Amendment A and formal drawings filed on 7/23/03. Applicant's arguments with respect to new claims 14-26 have been considered but are moot in view of the new grounds of rejection.

Claims 1-13 have been cancelled and new claims 14-26 are currently pending.

### **DETAILED ACTION**

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 14,15,18-22 and 25-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Luu et al. (U.S. Patent No. 5,871,763).

Luu teaches treating a substrate (i.e. tissue, napkin or towel) with a lotion composition (see abstract and col.1, lines 6-13) comprising 10% or less water (see col.4, lines 3-5). Luu teaches oils such as PEG-40 castor oil (col.7, line 7), lanolin, triglycerides, alkyl fatty acid esters (see col.7, lines 43-46). Luu also discloses that the lotion composition can include an emollient such as isostearyl neopentanoate (col.8, line 62), as well as other optional ingredients such as olive oil, sesame oil, mink oil, animal oil, botanical extracts such as basil extract, eucalyptus extract and chamomile extract (col.12, lines 64-67, bridging col.13, lines 1-9) and a humectant. Luu teaches that the botanical extract, humectant or animal oil is present in an amount of less than about 3 percent when used in the base composition. Luu also discloses a skin refresher

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agent such as encapsulated water in oil, mentol<sup>92</sup> oil and eucalyptus oil (col.13, lines 9-18), and that the lotion can contain also a surfactant, namely a polyol ester which emulsifies the lotion (col.8, lines 63-67, col.9, lines 1-17).

Luu does not specifically teach an oil-in-water emulsion.

However, absent a showing in the criticality of oil-in-water emulsion, there are no unexpected results, since the prior art permits water (see col.4, lines 3-5) and has a variety of oils disclosed (see col.7, lines 43-44, col.12, lines 64-66).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to use the composition taught by Luu, because Luu teaches a lotion composition comprising water and an oil, a humectant and a surfactant which emulsifies the lotion, which is useful for the purpose of imparting a smooth, lubricious and non-greasy feeling when the substrate is applied to the skin. One would expect similar beneficial results.

### ***Conclusion***

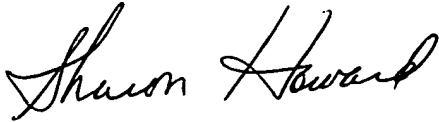
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sharon L. Howard whose telephone number is (703) 308-4359, and the new number will be (571) 272-0596 after 2/2/04. The examiner can normally be reached on 9:00am - 5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thurman K. Page can be reached on (703) 308-2927 and after 2/2/04, (571) 272-0602. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.


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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1234.



Sharon Howard  
January 13, 2004



JAMES M. SPEAR  
PRIMARY EXAMINER  
AU 1615

Claims 1-13 are cancelled.

Claims 14, 15, 18-22, 25 and 26 are rejected.

Claims 16, and 17 are allowed.

1. Claims 23 and 24 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

*James M. Spear*

JAMES M. SPEAR  
PRIMARY EXAMINER

*AU 1615*